

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT L. TUCKER, JR.

Claimant

VS.

RAYTHEON AIRCRAFT COMPANY

Respondent

Self Insured

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Docket No. 231,815

ORDER

Respondent requested review of the preliminary hearing Order dated August 10, 1999, entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge granted claimant's request for temporary total disability benefits. Respondent's Application for Review describes the issue as whether the ALJ exceeded his authority in awarding temporary total disability benefits for the period from July 3, 1999 to August 21, 1999.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and for purposes of preliminary hearing, the Appeals Board finds and concludes that the issue raised by respondent is not a jurisdictional issue and the appeal must, therefore, be dismissed.

On an appeal from a preliminary hearing order the Board has limited jurisdiction. K.S.A. 1998 Supp. 44-534a grants jurisdiction to the Board to review the following issues on appeal from preliminary hearings: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of employment; (3) whether notice and claim were timely made; and (4) whether certain defenses apply. Respondent does not raise an issue that falls within one of these categories. In fact, at the preliminary hearing respondent stipulates for purposes of preliminary hearing that claimant's injury is compensable. Therefore at this stage of the proceedings, K.S.A. 1998 Supp. 44-534a does not empower the Board with jurisdiction to decide the issue appealed.

K.S.A. 1998 Supp. 44-551(b) confers jurisdiction upon the Board to review an appeal from a preliminary hearing order entered pursuant to K.S.A. 1998 Supp. 44-534a where it is alleged that the administrative law judge exceeded his or her jurisdiction in

making such order. An administrative law judge has the authority at a preliminary hearing to determine whether a claimant is temporarily and totally disabled. Therefore, the ALJ did not exceed his jurisdiction and K.S.A. 1998 Supp. 44-551(b) does not grant the Board jurisdiction, at this juncture of the proceeding, to review and reweigh the evidence concerning the award of temporary total disability benefits.

The respondent may preserve the issue for final award as provided by K.S.A. 1998 Supp. 44-534a(a)(2). That statute provides in pertinent part:

Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review the preliminary hearing Order dated August 10, 1999, entered by Administrative Law Judge John D. Clark and that this review should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
David S. Wooding, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director